

Legal Consequences to the Insuring of Bankrupt Assets Carried Out by Ninikdewi Ningsih Between PT. Samudra Mela Abadi With PT. Bank Uob Indonesia (Example Case of Commercial Court Decision Decision Number: 03/Renvoi Prosedur/2016/PN.Niaga.Sby jo Number: 12/Pailit/2016/PN.Niaga.Sby.)

Stanilaus Atalim^{1,2,3,*} Fianita Chandra¹

¹*faculty of law, Indonesia University, West Java 16424, Indonesia*

²*Master Degree, Indonesia University, West Java 16424, Indonesia*

³*Doctor of law, parahyangan University, West Java 40141, Indonesia*

¹*Email: fianita.chandra@gmail.com*

^{*}*Corresponding author. Email: St_atalim@yahoo.com*

ABSTRACT

In carrying out a business activity, the need for funds is the most important need and must be met by business actors to be able to maintain and develop the continuity of their business activities, so that to overcome these problems is done with a loan that results in debts, if the debtor cannot carry out his obligations namely debt repayment, the debtor can be asked for a bankrupt statement. The research method used is descriptive normative legal research method, secondary and primary data sources as supporting data that are analyzed quantitatively. Based on the decision of the Surabaya Commercial Court Number 03 / Renvoi Procedure / 2016 / PN.Niaga.Sby jo Number: 12 / Bankrupt / 2016 / PN.Niaga.Sby. can be seen that the land and buildings that are pledged by PT. Samudra Mela Abadi as collateral for a credit loan to PT. Bank UOB Indonesia is owned by Ninikdewi Ningsih, which was declared bankrupt before the implementation of this loan. According to Law Number 37 of 2004 concerning Bankruptcy and PKPU Article 24 states that the debtor by law loses his right to act on his property. Therefore, based on the decision, a legal action has been carried out by the bankrupt debtor on its bankrupt assets, the bankrupt debtor has violated Article 24 of the Bankruptcy Law that the debtor has no right to do anything about his assets.

Keywords: *bankruptcy, creditor, debtors*

1. INTRODUCTION

In carrying out a business activity, the need for funds is the most important and must be met by business actors to be able to maintain and develop the continuity of their business activities, so as to overcome the problem of the need for these funds, it is carried out with loans, both loans to individuals and business entities. , so that more and more problems that arise in carrying out business activities, namely accounts receivable debt. For the implementation of a debt debt, it must be followed by an agreement made by those who agree to bind themselves. An agreement must meet the legal requirements for an agreement based on Article 1320 of the Civil Code, Agreements that have been made legally between the parties apply as a law for those who agree to bind themselves to make the agreement and the agreement raises the rights and obligations (achievements) for those who agree to make it. If

one of the parties that binds themselves to make the agreement does not do what is their right or obligation or does what cannot be done according to the agreement or does but exceeds the agreed period of time then the party has defaulted. In carrying out the agreement followed by the surrender of something as collateral. Guarantee is something given to creditors to provide confidence that the debtor will carry out obligations in accordance with the contents of the agreement. If the debtor does not carry out the agreement then the object guaranteed is the property of the creditor in accordance with the provisions made for those who bind him. [1] There is also a credit guarantee interpreted as wealth or the ability of someone's statement of ability to repay a debt.

If after the agreement on a debt agreement followed by a guarantee, then one of the parties defaults or does not carry out what was agreed in

accordance with what was agreed, namely the payment of the loan received by the debtor and the debtor does not have the ability to pay off debts that have fallen due and billable, the debtor may be requested for a bankruptcy statement from the District Court at the Commercial Court. In Article 1 of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (hereinafter referred to as UUKPKPU), bankruptcy is a general confiscation of Pailit Debtor wealth which after reading the bankruptcy statement is a curator who grants and manages debtor assets under the supervision of the debtor Supervising Judge as regulated in this Law. If a debtor has been declared a bankrupt debtor by the Commercial Court Judge Panel at the District Court, the statement of bankruptcy will have legal consequences, that is, the debtor will be publicly confiscated for all assets of the bankrupt debtor and the bankrupt debtor has lost his rights in the management and acquisition of his assets. . [2] Meanwhile, creditors will experience uncertainty about the legal relationship that exists between bankrupt debtors and creditors.

Then after a request for bankruptcy is granted by the District Court, the administrative arrangements and liquidation of bankruptcy assets will be forwarded by the curator. In Article 1 number (5) of the Bankruptcy and Deferral of Debt Payment Obligation Acts, "The curator is the inheritance hall or individual appointed by the court to administer and settle bankrupt debtor assets under the supervision of a supervising judge."

Then for debtors who have been declared bankrupt by the Commercial Court Judge Panel at the District Court, they do not have any authority over their assets which are included in bankrupt assets and then an agreement arises after the debtor is declared bankrupt, then the agreement cannot be paid with bankrupt assets in accordance with Article 25 The Bankruptcy and PKPU Law reads: "All debtor engagements that arise after the verdict of the bankruptcy statement can no longer be fulfilled from the assets of bankruptcy, unless the engagement provides benefits for bankrupt assets." and based on Article 34 of the Bankruptcy and PKPU Law that reads "Agreement that intends to transfer the rights to land, transfer the name of the ship, the imposition of mortgage, mortgage, or fiduciary security that has been promised in

advance, cannot be carried out after the verdict of the bankruptcy statement is pronounced."

In the case which I will discuss here on June 29, 2016 PT. Samudra Mela Abadi has been declared bankrupt with all the legal consequences, which stipulated that PT. Bank UOB Indonesia as a concurrent creditor, then in Decision Number: 03 / Renvoi Procedure / 2016 / PN.Niaga.Sby jo Number: 12 / Bankrupt / 2016/PN.Niaga.Sby PT.Bank UOB Indonesia submits a Renvoi Application to the list of PT. Samudra Mela Abadi (in bankruptcy) on August 22, 2016 to serve as a separatist creditor of the holder of collateral rights to land and buildings owned by Ninik Dewiningsih (in bankruptcy). Then the Judge granted the PT Bank Indonesia Renvoi Request as a separatist creditor. However, Ninik Dewiningsih was declared bankrupt by the District Court at the Surabaya Commercial Court on November 5, 2015, where Ninik Dewiningsih was declared bankrupt with all the legal consequences on November 5, 2015 and then made his land and buildings become collateral for PT. Samudra Mela Abadi on January 25, 2016.

2. METHOD

The research method that the author uses in this writing is a normative legal research method with research on the legal rules and its principles. [3] This study examines issues that are based on primary data which are legal material that has authoritative nature which means having authority. This legal material was obtained from statutory regulations, official records, and decisions of previous judges. Secondary legal material is carried out by carrying out a literature study for legal materials and non-legal materials that have a connection with research. [3] Included in the secondary legal material are doctrine, teachings from experts on bankruptcy material and legal aspects including scientific work from experts that have been published in scientific journals, as well as news and interviews with written legal issues with related parties. The parties intended to conduct this research are academics, practitioners, and curators who have years of experience in bankruptcy law. The data will then be elaborated to get a conclusion.

3. ANALYSIS

Bankruptcy has Consequences for debtor, when the debtor is declared bankrupt, then the curator is entitled to conduct the management and settlement under the supervision of the Supervising Judge since the decision of the bankruptcy statement was pronounced by the Commercial Court Judges. Then, a bankruptcy verdict brings a legal consequence that debtors who have declared bankruptcy have immediately lost their right to take care of and settle their property so that the curator is only allowed to do legal actions against his assets as well as in the management and settlement of debtor assets, as well as the consequence of this is that all agreements that arise after a bankrupt debtor cannot be paid for from bankrupt assets.

consideration of the decision of the Panel of Judges at the Commercial Court at the Surabaya District Court which states that:

1. PT. Bank UOB Indonesia is a separatist creditor holding rights to land and buildings and also PT. Bank UOB Indonesia obtains in good faith
2. Curator from PT. Samudra Mela Abadi who did not recognize PT. Bank UOB Indonesia as a separatist creditor of land and buildings and only limited to the stock of goods and supplies is a mistake.

There are several things that the author disagrees with the consideration of the Commercial Court Judges at the District Court, the Panel of Judges stated in their assessment "the land and buildings were obtained by the applicant in good faith." In this case the authors disagree with the consideration of the Panel of Judges because it is clear in good faith that an agreement made based on the norms of propriety and decency according to the agreement must be done by fixing it so that it does not meet the needs.

good faith has been covered by the element of a halal cause regulated in Article 1320 of the Civil Code which if not fulfilled a halal cause then the agreement is null and void. Because the curator is required to make an announcement regarding bankruptcy in 2 (two) newspapers and state news, then everyone is considered to have known (Article 17 number (1) of the Bankruptcy Law and PKPU). So that PT. Bank UOB Indonesia (the Petitioner) must have known that the land and

building belonged to Ninikdewi Ningsih, which was declared bankrupt on 5 November 2015.

Then the second, about Ninikdewi Ningsih who agreed and gave his land and buildings as collateral for PT. Samudra Mela Abadi, Ninikdewi Ningsih is not allowed to take legal action on her assets because Ninikdewi Ningsih did not have authority over her property when Ninikdewi Ningsih bankruptcy on November 5, 2016.

Third, the Panel of Judges did not consider Ninikdewi Ningsih, which had been declared bankrupt in advance on November 5, 2015, which stated that all assets owned by Ninikdewi Ningsih which were bankrupt assets were in public confiscation and could only be handled and administered by curators. Because bankruptcy is all assets owned by Ninikdewi Ningsih since the decision of the bankruptcy statement or during the bankruptcy took place. So according to the author that when Ninikdewi Ningsih has been declared bankrupt with all its legal consequences by the Board of Judges of the Commercial Court at the Surabaya District Court, all of Ninikdewi Ningsih's assets (debtors in bankruptcy) and also all those obtained during bankruptcy, cannot be used as collateral for PT. Samudra Mela Abadi by Ninikdewi Ningsih for being in a public confiscation.

Fourth, regarding the bankruptcy assets guarantee, if indeed a burden on the bankrupt assets occurs, it can only be done by the curator and not by the bankrupt debtor because at the time of the declaration of the bankruptcy statement, only the curator has the authority.

Furthermore, the Panel of Judges also did not consider that on November 5, 2015 Ninikdewi Ningsih had waived her special rights, namely that Ninikdewi Ningsih as the guarantor of the debt relinquished all of her rights and authority which by law was given to the guarantor of the debt. So that Ninikdewi Ningsih provides full collateral for assets that already exist and / or that will be obtained will not be reached by a claim under the name and / or by another party where the guarantor has a certain debt or obligation to another party. So the agreement cannot be paid from bankrupt assets because bankruptcy law has properties "lex specialist" that means must take precedence. So when the debtor bankruptcy then the debtor has no rights to do something about his possessions.

Then to the consideration of the Panel of Judges who said that "The curator of PT. Samudra Mela Abadi who did not accept PT. Bank UOB Indonesia as a creditor separatis of land and buildings and only limited to the supply of goods and is a mistake " is not right.

Because author have an opinion, that's right if curator from PT. Samudra Mela Abadi didn't accept PT. Bank UOB Indonesia as a creditor separatis of land and buildings because when Ninikdewi Ningsih bankruptcy on 5 July 2015 then on 25 Januari 2016 Ninikdewi Ningsih do legal action to the land and buildings by making it a loan guarantee PT. Samudra Mela Abadi so that agreement cannot be implemented, because on 5 November 2015 property Ninikdewi Ningsih including land and buildings is bankrupt property. Then the land and buildings which become bankrupt assets cannot be used as collateral for PT. Samudra Mela Abadi because Ninikdewi Ningsih is the legal owner of land and buildings with a Certificate of Property that was already bankrupt registered on November 5, 2015 so that Ninikdewi Ningsih's assets are in a public confiscation. So that Ninikdewi Ningsih's actions could be categorized as unlawful acts and because Ninikdewi Ningsih transferred bankrupt assets by making them collateral for PT. Samudra Mela Abadi. The elements of tort are regulated in Article 1365 of the Civil Code that every act against the law that can cause harm to others because of his mistakes, then must provide compensation. Based on Article 1365 of the Civil Code, tort are:

1. There is tort.

In this case because Ninikdewi Ningsih was declared bankrupt on November 5, 2015 then turn his bankruptcy assets into collateral from credit loans PT. Samudra Mela Abadi on 22 Agustus 2016. So in this case Ninikdewi Ningsih committed an act against the law because by declaring someone bankrupt by the Commercial Court at the District Court to have legal consequences namely the debtor does not have the authority to do anything about his property and may not transfer his bankruptcy assets during the bankruptcy took place.

2. There is loss.

The act of Ninikdewi Ningsih who transferred the bankrupt assets as collateral

from PT. Samudra Mela Abadi gives a loss to the creditors of Ninikdewi Ningsih as the holder of personal guarantee from Ninikdewi Ningsih due to the transfer of the land and building into the bankruptcy of PT. Samudra Mela Abadi caused losses that Ninikdewi Ningsih's land and buildings should have sold by the curator and the proceeds were distributed by the curator to creditors of Ninikdewi Ningsih.

3. There is a causal relationship between losses and actions;

Turn Ninikdewi Ningsih's assets into collateral for PT. Samudra Mela Abadi provided legal consequences for Ninikdewi Ningsih's bankruptcy assets, namely the reduction of bankruptcy assets in Ninikdewi Ningsih's bankruptcy and also caused loss to Ninikdewi Ningsih's creditors as the individual security holder of Ninikdewi Ningsih. Ninikdewi Ningsih's land and buildings should have been sold by curators and distributed to creditors holding personal guarantees from Ninikdewi Ningsih.

So that it can be seen that the actions of Ninikdewi Ningsih fulfill the elements in tort which according to the author may be subject to administrative sanctions, fines, or criminal sanctions.

Then the Panel of Judges at the Commercial Court at the Surabaya District Court also did not consider that the purpose of bankruptcy was to prevent debtors from doing something that could cause harm to their creditors and also provide security. With the bankruptcy of a person declared, the debtor no longer has the authority to conduct the maintenance and / or settlement of his bankrupt assets. author has an opinion that with the occurrence of Ninikdewi Ningsih's actions which transferred the bankrupt assets into collateral for credit loans of PT. Samudra Mela Abadi from PT. Bank UOB Indonesia, then it does not fulfill the objectives of the bankruptcy itself because when Ninikdewi Ningsih is filed for bankruptcy by its creditors, creditors from Ninikdewi Ningsih expect that Ninikdewi Ningsih cannot do anything about his assets that are declared bankrupt.

According to the author, regarding the consideration of the Panel of Judges who said that "PT. Bank UOB Indonesia is a separatist creditor

in good faith "is inappropriate. The judge did not see that the elements of good faith were not fulfilled.

Good faith in civil code is a condition legality of agreement that is a halal cause then that agreement become canceled in accordance with Article 1320 of the Civil Code. so that the decision that is not stated clearly and firmly, can cause not achieved legal certainty. because without a clear explanation regarding good faith, will have an influence on the agreement, which should that agreement have been null and void.

4. CONCLUSION

Based on the research by the author carefully and the discussion discussed in the previous chapters, it can be concluded that Ninikdewi Ningsih, which has been declared bankrupt with all the legal consequences, no longer has any rights to the assets included in the bankrupt assets.

Ninikdewi Ningsih's actions fulfilled the elements tort regulated in Article 1365 of civil code:

1. There is tort.

In this case because Ninikdewi Ningsih was declared bankrupt on November 5, 2015 then turn his bankruptcy assets into collateral from credit loans PT. Samudra Mela Abadi on 22 Agustus 2016. So in this case Ninikdewi Ningsih committed an act against the law because by declaring someone bankrupt by the Commercial Court at the District Court to have legal consequences namely the debtor does not have the authority to do anything about his property and may not transfer his bankruptcy assets during the bankruptcy took place.

2. There is loss.

The act of Ninikdewi Ningsih who transferred the bankrupt assets as collateral from PT. Samudra Mela Abadi gives a loss to the creditors of Ninikdewi Ningsih as the holder of personal guarantee from Ninikdewi Ningsih due to the transfer of the land and building into the bankruptcy of PT. Samudra Mela Abadi caused losses that Ninikdewi Ningsih's land and buildings should have sold by the curator and the proceeds were distributed by the curator to creditors of Ninikdewi Ningsih.

3. There is a causal relationship between losses and actions;

Turn Ninikdewi Ningsih's assets into collateral for PT. Samudra Mela Abadi provided legal consequences for Ninikdewi Ningsih's bankruptcy assets, namely the reduction of bankruptcy assets in Ninikdewi Ningsih's bankruptcy and also caused loss to Ninikdewi Ningsih's creditors as the individual security holder of Ninikdewi Ningsih. Ninikdewi Ningsih's land and buildings should have been sold by curators and distributed to creditors holding personal guarantees from Ninikdewi Ningsih.

Against Ninikdewi Ningsih, which has been declared bankrupt, the legal status of Ninikdewi Ningsih has changed to become incompetent. So that Ninikdewi Ningsih (in bankruptcy) no longer meets the legal requirements for an agreement. As well as the agreement doesn't fulfill a good faith has been covered by the element of a halal cause regulated in Article 1320 of the Civil Code which if not fulfilled a halal cause then the agreement is null and void. Because the curator is required to make an announcement regarding bankruptcy in 2 (two) newspapers and state news, then everyone is considered to have known (Article 17 number (1) of the Bankruptcy Law and PKPU). So that PT. Bank UOB Indonesia (the Petitioner) must have known that the land and building belonged to Ninikdewi Ningsih, which was declared bankrupt on 5 November 2015. so that the decision that is not stated clearly and firmly, can cause not achieved legal certainty. because without a clear explanation regarding good faith, will have an influence on the agreement, which should that agreement have been null and void.

REFERENCES

- [1] Suyatno, Thomas. et al. *Dasar-Dasar Perkreditan*. Edisi ke-4. (Jakarta: Gramedia Pustaka Utama, 1995).
- [2] Nating, Imran. *Peranan dan Tanggung Jawab Kurator dalam Pengawasan dan Pembersihan Harta Pailit*. (Jakarta: PT. RajaGrafindo Persada, 2004).
- [3] Marzuki, Peter Mahmud. *Penelitian Hukum*. (Jakarta: Kencana Prenada Media Group, 2005).